

- c. Medical examinations will be conducted as prescribed by AR 40–501, paragraph 8–3.
- d. The immediate commander of each soldier requesting retirement will ensure that medical examination procedures are followed per AR 40–501.

12–29. Hospitalization/Physical Evaluation Board proceedings

a. If a soldier who has requested retirement becomes hospitalized or has an identified medical problem, he/she might be referred to a physical evaluation board.

(1) The commander of the medical treatment facility, or a senior medical officer who has detailed knowledge of medical fitness and unfitness standards, disposition of patients, and disability separation processing, to whom the commander has delegated such authority, will make this decision.

(2) If referral to a physical evaluation board will result, the medical treatment facility commander or designated representative will notify Headquarters, Department of the Army (AHRC–EPR–F), 200 Stovall Street, Alexandria, VA 22332–0478, by mail or message as soon as possible. The notification will request a change of retirement date if appropriate and furnish a copy of the request to the retirement authority.

b. If the physical evaluation board is not necessary, but additional medical care is, the retirement will be processed as a non-disability retirement. Continuing medical problems will be treated up to and after the retirement date. Retirement dates will not be changed to continue medical treatment that will extend past the approved retirement date.

c. If referral to a physical evaluation board results, approved retirement dates will not be changed until approved by HQDA (AHRC–EPR–F).

Chapter 13 Separation for Unsatisfactory Performance

Section I General

13–1. Policy

A soldier may be separated per this chapter when it is determined that he/she is unqualified for further military service because of unsatisfactory performance. (See chap 1, sec II.) This reason will not be used if the soldier is in entry-level status, except as provided in paragraph 11–3c.

13–2. Criteria

a. Commanders will separate a soldier for unsatisfactory performance when it is clearly established that

(1) In the commander's judgment, the soldier will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory soldier.

(2) The seriousness of the circumstances is such that the soldier's retention will have an adverse impact on military discipline, good order, and morale.

(3) The soldier will likely be a disruptive influence in duty assignments.

(4) The circumstances forming the basis for initiation of separation proceedings will likely continue or recur.

(5) The soldier's ability to perform duties effectively is unlikely.

(6) The soldier's potential for advancement or leadership is unlikely.

b. Commanders will initiate separation action only when the soldier is under military control. As an exception, commanders may initiate this action when a soldier is confined by civil authorities and his/her military record indicates that he/she should be processed for separation by reason of unsatisfactory performance. (See chap 2, sec III for completing proceedings initiated before a soldier departs absent without leave.)

c. This provision applies to soldiers who are pregnant and whose substandard duty performance is not caused solely by pregnancy. Substandard duty might include failure to report to duty without medical or military authorization or refusal of CONUS reassignment during the first 6 months of pregnancy.

d. Commanders will consider a soldier meeting the criteria of a, above, and convicted by court-martial but not sentenced to a punitive discharge, for administrative separation under this chapter when the underlying misconduct and the soldier's performance warrant separation. When appropriate, commanders may start separation action while the soldier is serving a sentence to confinement at the installation detention facility.

e. Initiation of separation proceedings is required for soldiers without medical limitations who have two consecutive failures of the Army physical fitness test per AR 350–1 or who are eliminated for cause from Noncommissioned Officer Education System courses, unless the responsible commander chooses to impose a bar to re-enlistment per AR 601–280 (RA soldiers) or AR 140–111 (USAR AGR soldiers).

13-3. Separation authority

The commanders specified in paragraph 1-19 are authorized to take final action in cases processed under this chapter.

13-4. Counseling and rehabilitation requirements

Before initiating separation action against a soldier, commanders will ensure that the soldier has received adequate counseling and rehabilitation. Because military service is a calling different from any civilian occupation, a soldier should not be separated when unsatisfactory performance is the sole reason for separation unless there have been efforts at rehabilitation. Paragraph 1-16 prescribes the counseling and rehabilitation requirements.

Section II Procedures

13-5. Action by unit commander when soldier is under military control

When separation for unsatisfactory performance is appropriate, the unit commander will—

- a.* Take action specified in the notification procedure. (See chap 2 and fig 2-4.)
- b.* Forward the case recommending separation for unsatisfactory performance.
- c.* Ensure that a medical examination and mental status evaluation is obtained per paragraph 1-32.
- d.* When appropriate, forward the case recommending that the soldier be processed through medical channels. This is required when UCMJ action is not initiated and when the soldier has an incapacitating physical or mental illness that was the direct or substantial contributing cause of the conduct for which separation action is being considered.

13-6. Commanding officer's report

When the immediate commander determines that separation for unsatisfactory performance is in the best interest of the Service, he/she will report the fact, by memorandum (see fig 2-5), to the separation authority specified in paragraph 1-19 through the intermediate commander.

13-7. Action by intermediate commander

- a.* The intermediate commander may disapprove the recommendation and either—
 - (1) Direct reassignment of the soldier to another organization.
 - (2) Direct disposition by other means.
 - (3) In case of reassignment, forward the commanding officer's report to the new organization commander for information.
- b.* The intermediate commander may also forward the report recommending approval. Recommendation will be made as to characterization of service. (See para 2-2d(4) and (5).)

13-8. Action by the separation authority

On receiving a recommendation for separation for unsatisfactory performance, the separation authority (see para 1-19) will take one of the following actions:

- a.* Disapprove the recommendation and direct reassignment of the soldier to another organization. In this case the commanding officer's report will be forwarded to the new organization commander for information.
- b.* Disapprove the recommendation and return the case to the originator for disposition by other means. The return memorandum will include reasons for considering separation for unsatisfactory performance inappropriate.
- c.* Take other appropriate action under this regulation.
- d.* If the soldier has less than 6 years of total active and/or reserve military service, or has properly waived his/her right to consideration by a board—
 - (1) Approve separation for unsatisfactory performance.
 - (2) Approve separation for unsatisfactory performance and suspend execution of the separation. (See para 1-18.)
- e.* If the soldier has 6 or more years of total active and/or reserve military service and has not executed a waiver, convene a board of officers, as prescribed in chapter 2, to determine whether the soldier should be separated for unsatisfactory performance.

13-9. Separation authority action after board hearings

See chapter 2.

13-10. Characterization of service

The service of soldiers separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military records. (See paras 3-5 and 3-7.) An honorable characterization of service generally is required when the Government initially introduces limited use evidence. (See paras 3-8a and g.)

13-11. Type of separation

Soldiers separated under this chapter will be discharged. (See para 1-11 for additional instructions on ARNGUS and USAR personnel.)

Chapter 14 Separation for Misconduct

Section I General Provisions

14-1. General

This chapter establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave.

14-2. Policy

- a.* Action will be taken to separate a soldier for misconduct when it is clearly established that—
 - (1) Despite attempts to rehabilitate or develop him/her as a satisfactory soldier, further effort is unlikely to succeed.
 - (2) Rehabilitation is impracticable or the soldier is not amenable to rehabilitation (as indicated by the medical or personal history record).
 - (3) The provisions of paragraph 1-33 have been complied with, if applicable.
- b.* Separation action may be taken when a soldier is not under military control. (See chap 2, sec III.)
- c.* Commanders will not take action prescribed in this chapter instead of disciplinary action solely to spare an individual who may have committed serious misconduct from the harsher penalties that may be imposed under the UCMJ.
- d.* Before taking action against a soldier under section III of this chapter because of minor disciplinary infractions or a pattern of misconduct, commanders will ensure that the soldier has received adequate counseling and rehabilitation. (See para 1-16.)
- e.* Misconduct involving fraudulent entry will be considered under chapter 7. Misconduct involving homosexual conduct will be processed under chapter 15.
- f.* Commanders will consider soldiers meeting the criteria of section III of this chapter and convicted by court-martial, but not sentenced to a punitive discharge, for administrative separation under section III, when the underlying misconduct warrants separation. When appropriate, commanders may initiate separation action while the soldier is serving a sentence to confinement at the installation detention facility.

14-3. Characterization of service or description of separation

- a.* A discharge under other than honorable conditions is normally appropriate for a soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the soldier's overall record. (See chap 3, sec II.)
- b.* When the sole basis for separation is a serious offense resulting in a conviction by court-martial that did not impose a punitive discharge, the soldier's service may not be characterized as under other than honorable conditions unless approved by HQDA (AHRC-EPR-F).
- c.* When a soldier has completed entry-level status, or paragraph 11-3c applies, characterization of service as honorable is not authorized unless the soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate.
 - (1) A characterization of honorable may be approved only by the commander exercising general court-martial jurisdiction, or higher authority, unless authority is delegated per paragraph 1-19c(2).
 - (2) A commander exercising general court-martial jurisdiction may delegate authority to the special court-martial convening authority to approve separation with service characterized as honorable when the sole evidence of misconduct is urinalysis results, which cannot be used for characterization of service as specified in AR 600-85, chapter 6, or when an administrative discharge board has recommended separation with an honorable discharge. (See para 2-12b(1).)
- d.* If characterization of service under other than honorable conditions is not warranted for a soldier in entry-level status (see chap 3, sec II), service will be described as uncharacterized, except as provided in paragraph 3-9a(3). (Also see para 11-3c.)
- e.* An honorable characterization of service is generally required when the Government initially introduces limited-use evidence. (See para 3-8a and *g.*)